

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)	
)	
Closed Captioning of Video Programming)	CG Docket No. 05-231
)	
Telecommunications for the Deaf, Inc.)	
Petition for Rulemaking)	
)	
To: The Secretary		

COMMENTS

KJLA, LLC ("KJLA"), the licensee of Station KJLA(TV), Ventura, California (the "Station"), by its attorneys, hereby submits these Comments in the above-referenced rule making proceeding concerning closed captioning of video programming and related compliance and quality issues raised in the Petition for Rulemaking filed by Telecommunications for the Deaf, Inc. ("TDI"). *See Notice of Proposed Rule Making*, FCC 05-142, released July 21, 2005 ("*NPRM*"). KJLA recognizes the importance of effective closed captioning services for deaf and hard-of-hearing Americans. However, KJLA submits that the closed captioning rules proposed in the *NPRM* fail to strike an appropriate balance between the hearing-impaired community's needs on one hand, and the costs of closed captioning to video programming providers on the other. KJLA supports retention of the current rules. KJLA also seeks clarification of the Commission's treatment of bilingual English and Spanish-language programming and urges the Commission to apply the "phase-in" schedule for Spanish-language programming to such bilingual programming. In support thereof, KJLA states as follows.

KJLA believes that the Commission's existing rules create a fair and efficient system for closed captioning of video programming and that the major overhaul advocated by TDI and

proposed in the *NPRM* is unnecessary. While closed captioning presents various challenges, and closed captioning services remain less than perfect, the vast majority of closed captioning problems discussed in the *NPRM* are *de minimis* in nature and do not warrant the extensive regulation urged by TDI. In the *Closed Captioning and Video Description of Video Programming* proceeding, the Commission deliberately chose a balanced, pragmatic set of rules over stricter regulatory controls in order to promote cost-effective advances in the quantity and quality of closed captioning. See Report and Order, 13 FCC Rcd 3272, 3278 (1997) ("*R&O*") (balancing need for closed captioned programming against realities of video marketplace, including limited financial resources of video programming providers and limitations on supply of captioners); Order on Reconsideration, 13 FCC Rcd 19973 (1998) ("*Reconsideration Order*") (generally upholding rules against calls for stricter requirements). Since their adoption, these rules have helped to improve closed captioning for hearing-impaired television viewers without shifting an undue burden onto video programming providers. In the absence of any demonstrable evidence that the proposed rules are necessary and will significantly improve closed captioning services, the Commission should not abandon its current rules for a new set of requirements that will significantly raise administrative costs.

In particular, KJLA opposes the imposition of non-technical and technical quality standards as well as new monitoring and reporting requirements. See *NPRM* at ¶¶ 10-16, 17-20, 21-25 and 40-43. To begin with, a requirement that video programming providers satisfy certain non-technical quality standards, governing such matters as accuracy of transcription, spelling and grammar, would require a significant expenditure of resources on the part of video programmers grossly out of proportion to the extent of the problems themselves. While technology and rising skill levels continue to improve the quality of captioning, errors are a part of the captioning

process, despite the best efforts of captioners. Practically speaking, such errors will remain a part of the captioning process, regardless of the imposition of official non-technical captioning quality standards. As the Commission previously recognized, the small gains that non-technical quality standards might achieve cannot justify the enormous "administrative burden" that the required monitoring of all non-exempt programming for "wrong, misspelled, or missing" words would impose on video programmers, including stand-alone operators such as KJLA. *See R&O*, 13 FCC Rcd at 3374-3375.

KJLA objects on the same grounds to the proposed rules for technical quality standards and new monitoring requirements. Technical glitches, while regrettable, are a part of the captioning process, and rules imposing onerous monitoring requirements and penalties cannot fully eradicate such problems. The Commission's current rules strike a balance between the need to ensure properly functioning captioning processes and the undue burden a strict technical monitoring scheme would impose on video programming providers. *See, e.g.*, 47 C.F.R. 79.1(c) (requiring video programming distributors to "pass through" all programming received with closed captioning to television households with the original closed captioning data intact); *R&O*, 13 FCC Rcd at 3369 (allowing distributors to rely on the certifications of video programming suppliers as to closed captioning). As with non-technical quality standards, requiring the continuous monitoring of equipment and procedures under the proposed technical quality standards would impose significant administrative costs on video programming providers that would far outweigh any resulting gains in the technical quality of closed captioning services.

Next, KJLA submits that the proposed reporting requirements suffer the same cost-benefit imbalance as the proposed quality and monitoring requirements discussed above. Under the Commission's current rules, video programming distributors are not required to submit

compliance reports, but are required to "maintain records sufficient to demonstrate compliance." *Reconsideration Order*, 13 FCC Rcd 20026-27. In addition, programming providers currently are permitted to rely upon the certifications of program suppliers concerning compliance or exemption from captioning requirements. *See R&O*, 13 FCC Rcd at 3369. New rules requiring video programming distributors to complete compliance reports with their own certifications would presumably necessitate independent verification by programming distributors of the certifications provided by programming suppliers. Such verification, in addition to the efforts necessary to monitor and satisfy compliance report requirements, would impose substantial administrative burdens on video programming providers. In the *Closed Captioning and Video Description of Video Programming* proceeding, the Commission rejected recordkeeping and reporting requirements as "unnecessarily burdensome and administratively cumbersome," and upheld this determination on reconsideration. *R&O*, 13 FCC Rcd at 3383; *Reconsideration Order*, 13 FCC Rcd at 20026-20027. The Commission's finding applies with equal force to the reporting requirements proposed in the *NPRM*.

Recordkeeping and compliance report requirements, like the proposed quality and monitoring rules, would unduly raise the administrative costs of closed captioning for the Commission as well as video programming distributors. For many programming providers, particularly small independent broadcast stations like KJLA, such rising costs could detrimentally affect the quality of video programming itself without improving the quality of closed captioning services. Accordingly, the Commission should maintain its current rules rather than adopt a new set of onerous closed captioning requirements. In the event the Commission does adopt new requirements, the Commission must also adopt new exemptions to these requirements to ensure that small independent programming distributors like KJLA are not

saddled with unreasonable closed captioning costs that threaten the economic viability of their businesses.

Finally, KJLA requests that the Commission clarify the regulatory classifications assigned to bilingual programming, specifically English-Spanish-language programming, and to stations that broadcast separate English and Spanish-language programs. Currently, the Commission's benchmark approach to captioning assumes that English and Spanish-language programming are strictly either/or in nature. The inclusion of English and Spanish-language segments within the same program, or separate English and Spanish-language programs on the same station, present novel captioning issues that should properly be addressed before the January 1, 2006 deadline for the closed captioning of 100% of new English-language programming.

KJLA submits that bilingual programming should be subject to the January 1, 2010 deadline for the closed captioning of 100% of new Spanish-language programming rather than the earlier deadline for English-language programming. In the *Reconsideration Order*, the Commission cited "logistical difficulties" associated with Spanish-language captioning and the extra time necessary for the Spanish-language captioning market to develop as reasons for the longer transition period for the captioning of Spanish-language programming. 13 FCC Rcd at 20015-20016. These reasons apply with equal or greater force to bilingual captioning. At the very least, bilingual captioning requires double the efforts of individual English or Spanish-language captioning, and the market for bilingual captioning is obviously less developed than either the individual English or Spanish-language captioning markets, as evidenced in part by the fact that, to date, the Commission itself has failed to account for such a market. Accordingly,

KJLA submits that bilingual programming should be subject to the Spanish-language phase-in schedule rather than the English-language captioning deadline.

As for stations that broadcast separate English and Spanish-language programs, these stations should be subject to the January 1, 2006 100% requirement for their English-language programs and the appropriate percentage requirements (30% for 2004-2006 and 50% for 2007-2009) for their Spanish-language programs.

In sum, KJLA urges the Commission to retain its current captioning rules, which seek to balance the needs of the hearing-impaired community with the costs of captioning to video programming providers, rather than adopt the burdensome quality standards and monitoring and reporting requirements proposed in the *NPRM*. Additionally, KJLA submits that the Commission should classify bilingual programming as Spanish-language programming for purposes of the Commission's captioning phase-in schedules and subject stations that broadcast separate English and Spanish-language programs to the respective English and Spanish-language captioning deadlines.

WHEREFORE, for the foregoing reasons, KJLA, LLC requests that the Commission maintain its current closed captioning rules and clarify that it will treat bilingual programming as Spanish-language programming for purposes of the Commission's captioning deadlines and allow stations that broadcast separate English and Spanish-language programs to meet the respective English and Spanish-language captioning deadlines separately.

Respectfully submitted,

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